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Supreme Court, U.S.

FILED

AUG 26 1991

OFFICE OF THE CLERK

NO.

IN THE
UNITED STATES SUPREME COURT

October Term 1991

IN RE LEO STOLLER,

Petitioner.

WRIT OF CERTIORARI
TO THE SUPREME COURT OF ILLINOIS

PETITION FOR WRIT OF CERTIORARI

Leo Stoller
Suite 700
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(708) 453-6561

Pro se.



QUESTION PRESENTED FOR REVIEW

Have the Illinois Attorney Registration and Disciplinary Commission and the Supreme Court of Illinois defrauded the Petitioner of due process and equal protection of the laws by refusing to investigate allegations that prominent Chicago attorneys conspired with the Petitioner's family members to deprive him of his \$15 million business and other property without compensation?

LIST OF PARTIES

The following individuals are
parties in this proceeding:

James J. Grogan

Thomas J. O'Brien

George N. Leighton

Arthur L. Dunne

Ellyn S. Rosen

Theodore Ansani

Howard D. Galper

John C. O'Malley

William Harte

George Feiwell

James Bandy

Earl L. Neal

Christine Anderson

Ronald Balson

Stephen Garcia

William H. Hrabak

Courtney N. Nottage

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OPINIONS BELOW

The decision of the Supreme Court of Illinois, denying the Petitioner's request for a special prosecutor to investigate the allegations contained in a complaint filed with the Illinois Attorney Registration and Disciplinary Commission (ARDC), was filed on May 28, 1991, and is set forth in the Appendix at A-1. The ARDC has not issued an opinion; its refusal to investigate the Petitioner's complaints is the subject of this appeal.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257. The final decision of the Supreme Court of Illinois denying the Petitioner's motion for appointment of a special prosecutor and other motions was issued on May 28, 1991.

CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED

The fourteenth amendment to the United States Constitution states in part:

nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

In 1975, the Petitioner, Leo Stoller, began a business which later became known as Stealth Industries, Inc. Under Stoller's supervision and management, by 1988 Stealth Industries grew to become the fourth largest importer and distributor of tennis rackets in the United States. Sales in 1989 for Stealth Industries exceeded \$1.6 million for tennis equipment sold under the Stoller's famous trademark "Sentra" to such nation-

al chain stores as K-Mart, Wal-Mart, Venture, Zayre, and Ames, and sales were projected to exceed \$2.5 million for 1990. With profits from Stealth Industries Stoller had also acquired a 26-acre commercial development in Barrington, Illinois, valued at over \$2.9 million.

The dispute underlying this case began in 1989, when disagreements arose between Stoller and his family members, father Russell Stoller and brother Christopher Stoller, over the conduct of the business and the disbursement of company funds to pay lawyer's fees on matters unrelated to the business of Stealth Industries. Both Russell Stoller and Christopher Stoller were employed by Stealth Industries, with Russell Stoller handling certain customs matters and Christopher Stoller handling several

sales accounts. As a practical matter, however, neither Christopher Stoller nor Russell Stoller contributed greatly to the operation of Leo Stoller's company. In fact, Christopher Stoller spent little time at his job and drained large sums of money (over \$1 million) from Stealth Industries for personal use and for legal fees incurred in personal matters. The precipitating crisis occurred when company bank accounts at the NBD Elk Grove Bank were frozen as a result of the bank's uncertainty as to who still had the authority to withdraw funds, thus preventing the company from making necessary payments to suppliers, employees, the Internal Revenue Service, and the Customs Service.

George Leighton and Ronald Balson, attorneys who had long represented Stealth Industries and all three Stollers

on business and personal legal matters, indicated to Leo Stoller that the solution to the problems at Stealth Industries and with NBD Elk Grove Bank was an arbitrated agreement between family members. Leighton told Leo Stoller that he had been in contact with the attorney for the bank and indicated that the bank would be willing to permit Stealth Industries to resume withdrawals if Stoller would sign an arbitration agreement known as a "Memorandum of Agreement" temporarily delineating the responsibilities and authority of each family member and indicating a willingness to arbitrate the ownership and control of Stealth Industries.

What followed can only be characterized as a conspiracy by Russell and Christopher Stoller, Balson, Leighton, and others to defraud Leo Stoller of his

ownership of Stealth Industries. Faced with the prospect of frozen bank accounts and in urgent need of cash to meet his company's financial responsibilities, Leo Stoller had little choice but to agree to sign the agreement. In addition, Leo Stoller was persuaded to sign the agreement by the argument made by Leighton and Balson in confidence that a private arbitration was really nothing more than a way of airing family grievances and a method of getting Christopher Stoller to fulfill his responsibilities, to work more hours for the company, and to stop spending large sums of money for legal fees on matters unrelated to Stealth Industries. The "Memorandum of Agreement," dated November 6, 1989, essentially delineated the responsibilities of the Stollers in the operation of Stealth Industries and further set forth the

Stollers' agreement to arbitrate the disputes between them. Leighton and Balson nominated themselves and George Feiwell, another attorney who had represented the Stollers, to be the private arbitrators.

Before signing the agreement, however, in order to protect himself Leo Stoller, on advice of Leighton, had Russell Stoller sign an acknowledgement that Leo Stoller was the sole director and shareholder of Stealth Industries. Relying on this acknowledgement and on the legal advice of Leighton, Balson, and Feiwell, Leo Stoller signed the agreement on November 8, 1989. The agreement and acknowledgement were forwarded to the bank by Stoller. After assuming the role of arbitrator, Leighton continued simultaneously to represent all of the multiple parties to the arbitration agreement as their attorney on matters relating

directly to the arbitration. Leighton then redrafted the letter and notified the bank that "subject to our Memorandum of Agreement, the current status shall remain that . . . Leo Stoller is the sole director and shareholder of Stealth Industries, Inc."

Significantly, at the time of the drafting of this arbitration agreement Christopher and Russell Stoller owed Balson \$30,000 in unpaid fees for personal matters and similarly owed Leighton over \$48,000 in unpaid fees. Moreover, Leo Stoller discovered that Russell and Christopher Stoller had recently paid Balson over \$60,000 by Stealth Industries checks for legal fees unrelated to company matters. Leo Stoller had notified Balson that he was putting an end to that practice and that Russell and Christopher Stoller could no longer pay their private

legal fees out of Leo Stoller's company's funds.

The arbitration proceeding began on December 18, 1989. Prior to the proceeding, Leo Stoller had discussed with Leighton and Balson his concerns that he should find another attorney to represent him now that the two attorneys were going to be arbitrators. However, Leighton and Balson told Stoller that there was no need for him to obtain independent counsel because they could continue to represent his interests. At the first arbitration meeting, Feiwell inexplicably failed to attend, and Leighton and Balson told the Stollers that the proceedings could continue with the two attorneys acting as the sole arbitrators.

The arbitration proceeding consisted of several meetings in December 1989 and January 1990. During this time period,

Leighton and Balson continued to have ex parte contacts with the Stollers, and at one point Leighton contacted Leo Stoller in an attempt to have him authorize the payment of \$125,000 of Stealth Industries funds to pay a personal indebtedness of Christopher Stoller in a suit being handled by Leighton. Leo Stoller refused to permit the payment of Christopher Stoller's indebtedness with his company funds.

On January 31, 1990, Leighton and Balson announced their arbitration award. Despite the fact that Russell Stoller had acknowledged in writing that Leo Stoller was the sole shareholder of Stealth Industries, despite the fact that Christopher Stoller acknowledged during the proceeding that Leo Stoller had at least a 50% ownership interest, and despite the fact that Leo Stoller had introduced the

only evidence as to ownership, consisting of stock certificates in his name, the ownership of the company was, in the words of the arbitrators, "transferred" to Russell Stoller. The arbitrators also went beyond the scope of the arbitration agreement by awarding Leo Stoller's famous trademarks, "Sentra" and "Stealth," good will, and funds on deposit to Russell Stoller.

Immediately following the arbitration award, Leo Stoller was physically removed from the premises of Stealth Industries and Russell and Christopher Stoller began a program of using corporate funds for personal use and winding down the business of the company. Leo Stoller filed suit to set aside the arbitration award, and this suit is presently in litigation.

The action underlying this Petition began on July 3, 1990, when Leo Stoller filed a complaint with the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (ARDC). In his complaint, Stoller presented the facts discussed above and accused attorneys Leighton, Balson, and Feiwell with various violations of the Disciplinary Rules as a result of their conduct in the arbitration proceeding. Essentially, Stoller alleged that the three attorneys had, for personal pecuniary reasons, conspired to defraud Stoller of his ownership of Stealth Industries and had been guilty of conflict of interest in drafting an arbitration agreement, naming themselves as arbitrators, and acting as arbitrators as well as attorneys for the parties involved in the arbitration. Their breach of fiduciary duty was moti-

vated by self-interest in the nature of ensuring that over \$100,000 in legal fees owed by Russell and Christopher Stoller would be paid, and also that they would continue to receive lucrative business from those litigious individuals. Also included in the complaint to the ARDC were allegations against Earl Neal, William Harte, Stephen Garcia, and Theodore Ansani, who assisted Leighton, Balson, and Feiwell in defrauding Leo Stoller of Stealth Industries and other assets.

Despite the egregious breach of duty alleged in the complaint, the ARDC was unresponsive to the complaint, and to this date its officials, John O'Malley, James Grogan, James Bandy, Christine Anderson, and Ellyn Rosen, have thwarted and obstructed all investigation into the allegations. In fact, contrary to its normal practice, the ARDC failed even to

notify the accused individuals about the complaint until one attorney, Feiwell, was notified on September 21, 1990. The ARDC relied upon Feiwell to notify the other subjects of the complaint. Because of the inordinate delay, on August 1, 1990, Leo Stoller sent a letter of inquiry to Judge Comerford, Chief Judge of the Circuit Court of Cook County, who responded that Stoller should contact the Illinois Supreme Court in light of its role as supervisor of the ARDC. Letters requesting assistance were also sent to others including Judge Keleher, Chief Arbitration Judge for Cook County Circuit Court, Judge Moran, Chief Judge for the United States District Court for the Northern District of Illinois, and all ARDC Commission members individually.

As it became clear that the ARDC was not interested in pursuing and investi-

gating the allegations against the prominent attorneys named in the complaint, Leo Stoller filed a document entitled "Emergency Petition To Appoint An Independent Investigator/Prosecutor To Conduct An ARDC Investigation In Attorney Misconduct In Order To Avoid Conflicts Of Interests Which Exist Between The Current ARDC Investigators In Chicago And The Attorneys Charged In A July 3, 1990, ARDC Complaint 90-CI-3046." In this Emergency Petition, Stoller set forth the facts concerning the failure of the ARDC to follow its own procedures and concerning the apparent acquiescence of the ARDC to the activities surrounding the unlawful transfer of ownership of Stealth Industries. Alleging that the attorneys comprising the ARDC were unwilling to discipline prominent Chicago attorneys because of a widespread practice of fa-

voritism, Stoller argued that his right to due process and equal protection of the laws was being violated by the inaction of the ARDC. Stoller later filed motions amending his Emergency Petition to include the ARDC members and staff as respondents.

On May 28, 1991, the Supreme Court of Illinois issued an order denying the relief requested by Stoller. The order gave no reasons underlying the ruling of the court.

ARGUMENT

THE PERVASIVE CORRUPTION OF THE ILLINOIS ARDC AND COURT SYSTEM HAS PREVENTED AN INVESTIGATION OF DISCIPLINARY CHARGES AGAINST THE ATTORNEYS WHOSE CONDUCT HAS DEPRIVED THE PETITIONER OF HIS PROPERTY RIGHTS, RESULTING IN A VIOLATION OF THE PETITIONER'S RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF THE LAWS.

The corruption which is endemic in the Illinois judicial system is a matter

of vital national interest, as is evidenced by the recent actions of Attorney General Richard Thornburgh and United States Attorney Fred Foreman who, along with FBI Director William Sessions, announced indictments against numerous attorneys and a judge in the Chicago area on December 19, 1990. In the words of United States Attorney Foreman:

There is a movable feast of legal corruption which cravels from Downtown Chicago to Springfield, to Chicago City Hall, to the Circuit Court of Cook county and the highest levels of the Chancery Court.

Illinois has the most corrupt court system in the Nation. It is a matter of public record in Chicago that a few years ago over 300 lawyers were investigated as names came out of the "Operation Graylord" probe of Illinois Court Corruption and over 14 Illinois state judges were

convicted on corruption charges following their arrest in "Operation Graylord."

Lawyers who "paid off" judges or improperly gave money or arranged loans to Cook County judges received different treatment when disciplined by the Illinois Supreme Court, a study of court opinions shows. In a review of Illinois Supreme Court disciplinary actions against 22 lawyers who were charged with violating the same rule, the Chicago Daily Law Bulletin found the Illinois Supreme Court offered sometimes inconsistent reasoning to support its decisions on whether and what type of discipline to impose. A report released by the Chicago Counsel of Lawyers criticized the Illinois Supreme Court for its "insensitivity to ethics":

With regard to disciplining attorneys implicated in Operation Graylord, the Illinois Supreme Court has treated less

prominent attorneys far more harshly than prominent ones with similar ethical lapses.

Who you are or who you know is more important to the result in the Illinois Supreme Court than the merits of the case itself.

Also on December 19, 1990, in Chicago, United States Attorney Fred Foreman said in announcing indictments of the Chief Judge of Chancery Court of Cook County, and several other prominent Illinois lawyers including a State Senator John A. D'Arco Jr.:

the legal corruption of Operation Gambet surpass in both money and scope of the legal corruption unearthed in the infamous "Operation Graylord" investigation into Illinois Judicial corruption.

United States Attorney Foreman described certain Illinois lawyers and a judge as "groups of highly sophisticated fixers" who openly provide in Illinois a "boutique" of corrupt legal services, perhaps the most startling of which was

the payment of a \$10,000 bribe on behalf of alleged mob hit man Harry Aleman, who was acquitted by Cook County Judge Frank Wilson on charges that he murdered a Teamsters Union official despite the testimony of two eyewitnesses. This underscores the ongoing influence of the Chicago crime syndicate in venues ranging from the Chicago, Cook County Courts to the Springfield rotunda, the capitol of Illinois.

It is this national problem of corruption in the Illinois legal system which forms the basis of the constitutional deprivations suffered by the Petitioner, Leo Stoller, in this case. This case thus presents this Court with the opportunity both to rectify the deprivation of rights suffered by Stoller and to send a vitally important message to the attorney disciplinary commission in

Illinois and to similar commissions throughout the United States that this Court will not tolerate institutional state legal corruption and will not permit such bodies to ignore substantial complaints against prominent attorneys because of their status, political clout, and connections, while pursuing disciplinary proceedings against less powerful persons who may have committed less serious breaches of duty.

It has long been established that the fourteenth amendment imposes on states the standards necessary to ensure that judicial proceedings are fundamentally fair. Lassiter v. Department of Social Services of Durham County, North Carolina, 455 U.S. 18 (1981). Among the basic elements of due process is the requirement of an impartial and unbiased decisionmaker. Withrow v. Larkin, 421

U.S. 35 (1975). This basic requirement of fundamental fairness extends to administrative adjudications as well. Id.; Marshall v. Jerrico, Inc., 446 U.S. 238 (1980); Gibson v. Berryhill, 411 U.S. 564 (1973); Morrissey v. Brewer, 408 U.S. 471 (1972).

The inaction of the ARDC in this case following the complaint filed by Stoller manifests the fact that the ARDC is not an unbiased and impartial administrative body as is constitutionally required, but rather is unwilling to investigate, and is incapable of pursuing, the complaint because of endemic political corruption and favoritism that is pandemic in the state of Illinois. When a charge comes before the ARDC involving an attorney without the power, political clout, and influence of those named in the underlying complaint, the ARDC has no

difficulty in quickly penalizing the offending attorney, even to the extent of disbarring the offender. For example, during the pendency of Stoller's complaint with the ARDC, an attorney in a small practice in Vernon Hills, Illinois, named Oscar Posterli was suspended from his practice after the ARDC learned that he had exaggerated his grade-point average on his resume when job-hunting. Yet the far more serious breaches of duty in this case have met with silence from the ARDC.

It follows, therefore, that Stoller's inability to obtain relief from the ARDC because of this bias and impartiality has resulted in an unconstitutional deprivation of his right to due process and equal protection of the laws.

There can be no doubt that from the inception of the arbitration proceeding

Leo Stoller's constitutional rights have been consistently deprived. As discussed in the Statement of the Case, supra, the arbitration proceeding was a sham designed by Stoller's own attorneys to deprive Stoller of his property interests. Because of the self-interest of Stoller's attorneys, Leighton and Balson, the arbitration award was not based on the evidence and went far beyond anything contemplated in the arbitration agreement.

As noted in Dewey v. Reynolds Metal Co., 291 F. Supp. 786 (W.D. Mich. 1968), the rule of due process and other constitutional protections must extend to arbitration proceedings. Arbitrators derive their authority solely from the scope of the contractual agreement, United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960), and where arbitrators exceed

their powers the due process rights of parties may be violated, necessitating the setting aside of the award. Totem Marine Tug & Barge, Inc. v. North American Towing, Inc., 607 F.2d 649 (5th Cir. 1979) (setting aside arbitration award because it was fundamentally unfair; arbitration panel had awarded damages in an amount three times greater than what had been requested).

Having been fraudulently divested of his company and other assets, Stoller took the logical step of seeking an investigation into the conduct of those responsible for his loss. However, as has been demonstrated, see Statement of Facts, supra, the ARDC has proved to be unresponsive because of the widespread corruption in the Illinois-legal system. It is widely recognized that the cover-up of an investigation, or the refusal of

an administrative body to investigate the facts of an allegation, constitutes a violation of due process. As stated by the court in Barrett v. United States, 798 F.2d 565, 575 (2d Cir. 1986),

[u]nconstitutional deprivation of a cause of action occurs when government officials thwart vindication of a claim by violating basic principles that enable civil claimants to assert their rights effectively.

The court in Barrett thus ruled that the estate of an individual who had died as a result of the unwarranted testing of a mescaline derivative by Army doctors could sue attorneys who had participated in the cover-up of the incident for the unconstitutional deprivation of due process.

Similarly, in Fisher v. City of Cincinnati, 753 F. Supp. 681 (S.D. Ohio 1990), the court recognized that the refusal of a police department to investi-

gate fairly the circumstances surrounding a collision between a police cruiser and a citizen's automobile would be a constitutional violation:

Assuming Fisher's allegations of a thwarted police investigation of the Collision and a cover-up of [the police officer's] intoxication to be true, the interference with and potential prejudice to Fisher's right of access to redress in state court rises to the level of a constitutional deprivation of Fisher's rights secured by the First and Fourteenth Amendments.

Id. at 687. The court also recognized the viability of the argument that the plaintiff's right to equal protection was violated by the police department's discrimination against the plaintiff in order to protect the officer:

Because plaintiff alleges that the police failed to fulfill their duty to enforce the laws equally and fairly against him, he has stated a valid cause of action under the Equal Protection Clause of the Fourteenth Amendment.

Id.; see also In re Thalheim, 853 F.2d 383 (5th Cir. 1988) (court must follow disciplinary rules when proceeding against attorneys).

In the same manner, the ARDC has violated the rights of Leo Stoller under the due process and equal protection clauses. By choosing to protect the prominent attorneys involved in the defrauding of Stoller's property from him by failing to investigate the charges alleged in Stoller's complaint, the ARDC has unconstitutionally prevented Stoller from seeking review of the attorneys' breach of ethics.

For reasons which remain unclear, in view of its failure to set forth any written discussion, the Supreme Court of Illinois has chosen not to afford Stoller any relief from the unconstitutional actions of the ARDC. The order of the

court below merely denies the request for a special prosecutor and the accompanying motions submitted by Stoller relating to specific actions of respondents following the submission of the Emergency Petition. At this point the only course of action open to Stoller to ensure that justice is served and the Constitution is upheld is the intervention of this Court. As stated in the synopsis of Ginger v. Circuit Court for County of Wayne, 372 F.2d 621, 622 (7th Cir.), cert. denied, 387 U.S. 735 (1967),

A petition for writ of certiorari to the Supreme Court of the United States is the only method by which review of [a] violation, in course of state disbarment proceedings, of due process or equal protection clauses of the Fourteenth Amendment to the United States Constitution can be made.

Accordingly, this Court should take this opportunity to hear this case as a means of making it clear that the pandemic

legal corruption existing in the Illinois judicial system cannot be tolerated.

This Petition clearly proves beyond any reasonable doubt that the institutionalized legal corruption in the State of Illinois has finally reached such epidemic proportions that politically connected attorneys can "under the color of law" openly and notoriously defraud their own client, the Petitioner, out of his property, worth over \$15 million, with the imprimatur of the Illinois State Disciplinary Commission (ARDC) of the Illinois Supreme Court.

The egregious actions of Stoller's attorneys and the inaction of ARDC cannot be left unpunished, and thus this Court is now being called upon to step in to accord all the relief which the United States Constitution affords its citizens, which is appropriate to ensure that jus-

tice for one is justice for all of the citizens of the United States of America whose constitutional rights of due process and equal protection have been violated by the State of Illinois Judicial System.

CONCLUSION

For all of the foregoing reasons,
the Petitioner, Leo Stoller, respectfully
requests this Court to grant his Petition
for Writ of Certiorari.

Respectfully submitted,

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Pro se.

NO.

IN THE
UNITED STATES SUPREME COURT

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WRIT OF CERTIORARI
TO THE SUPREME COURT OF ILLINOIS

APPENDIX

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Pro se.



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IN THE SUPREME COURT OF ILLINOIS

M.R. 7087

In re:)
)
 Leo Stoller,)
) Administrator's No.
 Complainant) 90 CH 548
)
)

ORDER

The Administrator's motion for leave to file objections instanter to complainant's motion for appointment of a special prosecutor is allowed.

George Leighton's motion for leave to file objections instanter to complainant's motion for appointment of a special prosecutor is allowed.

William Harte and Stephen Garcia's motion for leave to file objections instant to complainant's motion for appointment of a special prosecutor is allowed.

Howard Galper's motion for leave to file objections instanter to complainant's motion to amend the underlying complaint is allowed.

William Harte and Stephen Garcia's motion for leave to file instanter a response to the petition for rule to show cause is allowed.

George Leighton's motion for leave to file instant objections to the petition for rule to show cause is allowed.

Complainant's motion for appointment of a special prosecutor is denied.

Complainant's motion to amend the underlying ARDC complaint is denied.

Complainant's motion to file a reply to objections to complainant's motion to amend the underlying ARDC complaint is denied.

Complainant's petition for rule to show cause is denied.

Complainant's motion "to default" Theodore Ansani is denied.

Complainant's motion to file objections instant to the Administrator's motion to file objections to complainant's motion seeking appointment of a special prosecutor is denied.

Complainant's motion for leave to file instant a complaint charging a certain attorney, et al., with racketeering is denied.

The Administrator's motion to file a motion to dismiss complainant's motion seeking leave to file objections instant to the Administrator's motion to file objections instant to complainant's request for appointment of a special prosecutor is denied as moot.

Complainant's motion to file objections
instanter to the Administrator's motion
to dismiss is denied as moot.

Complainant's motion seeking a termina-
tion of any further filing of pleading in
this case is denied as moot.